



Montana Legislative History

Chapter: 195 Session L: 1999 **Checklist of Bill History**

Bill Number: 72 House / Senate

History and Final Status Sheet ☒

Introduced Bill ☒

Fiscal Note ☒

Third Reading Bill ☒

Final Version of Bill ☒

House

Committee:

Natural Resource

Hearing Date(s):

March 10, 1999

Committee Report:

Concurred as amended

Conference Committee

Hearing Date(s):

nil

Conference Committee Report:

Senate

Committee:

Natural Resource

Hearing Date(s):

Jan. 11, 1999

Committee Report:

Passed as amended

Compiler Notes

Compiled by: *sg*

Date: 11-9-23

Notes:

Bill Draft Number: LC0193**Bill Type - Number:** SB 72**Short Title:** Revise water quality laws**Primary Sponsor:** Bob Keenan (R) SD 38**Chapter Number:** 195**Bill Actions - Current Bill Progress:** Became Law**Bill Action Count:** 51

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	03/30/1999			
(S) Signed by Governor	03/26/1999			
(S) Transmitted to Governor	03/23/1999			
(H) Signed by Speaker	03/23/1999			
(S) Signed by President	03/22/1999			
(C) Printed - New Version Available	03/20/1999			
(S) Returned from Enrolling	03/19/1999			
(S) Sent to Enrolling	03/18/1999			
(S) 3rd Reading Passed as Amended by House	03/18/1999	48	0	
(S) Scheduled for 3rd Reading	03/18/1999			
(S) 2nd Reading House Amendments Concurred	03/17/1999	49	0	
(S) Scheduled for 2nd Reading	03/17/1999			
(H) Returned to Senate with Amendments	03/15/1999			
(H) 3rd Reading Concurred	03/15/1999	95	5	
(H) Scheduled for 3rd Reading	03/15/1999			
(H) 2nd Reading Concurred	03/13/1999	88	8	
(H) Scheduled for 2nd Reading	03/13/1999			
(C) Printed - New Version Available	03/10/1999			
(H) Committee Report--Bill Concurred as Amended	03/10/1999			(H) Natural Resources
(H) Committee Executive Action--Bill Concurred as Amended	03/09/1999	15	4	(H) Natural Resources
(H) Hearing	03/05/1999			(H) Natural Resources
(H) Referred to Committee	01/19/1999			(H) Natural Resources
(H) First Reading	01/19/1999			
(S) Transmitted to House	01/18/1999			
(S) 3rd Reading Passed	01/18/1999	40	9	
(S) Scheduled for 3rd Reading	01/18/1999			
(S) 2nd Reading Passed	01/16/1999	45	2	
(S) Scheduled for 2nd Reading	01/16/1999			

(S) Fiscal Note Printed	01/14/1999		
(S) Committee Report--Bill Passed as Amended	01/14/1999		(S) Natural Resources
(S) Committee Executive Action--Bill Passed as Amended	01/14/1999	10	0 (S) Natural Resources
(S) Fiscal Note Signed	01/13/1999		
(S) Fiscal Note Received	01/12/1999		
(S) Hearing	01/11/1999		(S) Natural Resources
(S) Fiscal Note Requested	01/07/1999		
(S) Referred to Committee	01/04/1999		(S) Natural Resources
(S) First Reading	01/04/1999		
(C) Introduced Bill Text Available Electronically	12/18/1998		
(S) Introduced	12/18/1998		
(C) Pre-Introduction Letter Sent	12/15/1998		
(C) Draft in Assembly/Executive Director Review	12/15/1998		
(C) Draft in Final Drafter Review	12/14/1998		
(C) Bill Draft Text Available Electronically	12/14/1998		
(C) Draft in Input/Proofing	12/11/1998		
(C) Draft to Drafter - Edit Review [SAB]	12/11/1998		
(C) Draft in Edit	12/10/1998		
(C) Draft in Legal Review	12/10/1998		
(C) Draft On Hold	12/01/1998		
(C) Draft to Requester for Review	11/23/1998		
(C) Draft On Hold	11/23/1998		
(C) Draft Request Received	09/23/1998		

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Legislative Council	
Drafter	Williams	Kathleen
By Request Of	Department of Environmental Quality	
Primary Sponsor	Keenan	Bob

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Environmental Protection	Simple		ENVP
Water	Simple		WAT

Additional Bill Information

Fiscal Note Probable: No

Preintroduction Required: Y

Session Law Ch. Number: 195

DEADLINE

Category: Revenue Bills

Transmittal Date: 03/30/1999

Return (with 2nd house amendments) Date: 04/15/1999

Section Effective Dates

Section(s) Effective Date Date Qualified

All Sections 26-MAR-99

SENATE BILL NO. 72

INTRODUCED BY KEENAN B

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WATER QUALITY, PUBLIC WATER SUPPLY, AND WATER AND WASTEWATER TREATMENT OPERATORS LAWS; EXEMPTING CERTAIN WATER DISTRIBUTION SYSTEMS FROM THE REQUIREMENT TO USE A CERTIFIED OPERATOR; AMENDING THE NONDEGRADATION NITRATE SIGNIFICANCE THRESHOLD FOR MULTIFAMILY, PUBLIC, AND MUNICIPAL SEWAGE SYSTEMS; AMENDING PUBLIC WATER SUPPLY LAWS BY INCREASING THE MAXIMUM ADMINISTRATIVE PENALTY; DELETING THE REQUIREMENT TO OBTAIN APPROVAL TO CONDUCT CERTAIN ACTIVITIES IN MUNICIPAL WATERSHEDS; REPEALING PROVISIONS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW'S CONTROL OF CERTAIN FUNDS AND RELATED TO MANDATORY ENFORCEMENT REQUIREMENTS; AMENDING SECTIONS 37-42-103, 37-42-302, 37-42-304, 37-42-308, 75-5-301, 75-5-636, 75-6-109, AND 75-6-112, MCA; REPEALING SECTIONS 75-5-501, 75-5-617, AND 75-6-110, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-42-103, MCA, is amended to read:

"37-42-103. Exemption. Operators of plants or systems ~~serving less than 10 families that do not serve~~ 15 or more service connections or 25 or more people for at least 60 days of the calendar year are exempt from this chapter."

Section 2. Section 37-42-302, MCA, is amended to read:

"37-42-302. Unlawful to operate plant or system without certified operator -- department to issue temporary certificates -- exception. (1) ~~It~~ Except as provided in subsection (3), it is unlawful for a person, firm, or corporation, both municipal and private, operating a wastewater treatment plant, water treatment plant, or water distribution system to operate ~~it~~ the plant or system unless the competency of the operator is certified to by the department under this chapter.

(2) ~~Furthermore~~ Except as provided in subsection (3), it is unlawful for a person to perform the duties

of an operator without being certified under this chapter.

(3) The prohibitions in subsections (1) and (2) do not pertain to a water distribution system that:

(a) does not contain a treatment facility;

(b) obtains all of its water from a public water supply system but is not owned or operated by the owner or operator of that public water supply system; and

(c) does not sell water.

~~(3)~~(4) For good cause shown, the department may issue temporary certificates that are valid for up to 1 year."

Section 3. Section 37-42-304, MCA, is amended to read:

"37-42-304. Application for operator's certificate -- fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a the fee of the same amount as the license cost as established pursuant to 37-1-134 and shall in effect on November 3, 1998, except that the department shall reduce the fee by the amount that the cost of processing the application is offset by federal funds received. The department may not act on an application until the fee has been paid."

Section 4. Section 37-42-304, MCA, is amended to read:

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Section 5. Section 37-42-308, MCA, is amended to read:

"37-42-308. Annual renewal -- fees -- revocation for failure to renew -- reinstatement -- notice of suspension. (1) Certificates issued under this chapter ~~shall~~ must be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee ~~according to the schedule~~

1 ~~adopted by the department pursuant to 37-1-134~~ in the amount in effect on November 3, 1998, except that the
2 department shall reduce the fee by the amount that the cost of administering the certificate is offset by federal
3 funds received to fund the administration of the program.

4 (2) If a certificate holder does not apply for a renewal of ~~his~~ the certificate before July 1 and remit to the
5 department the necessary renewal fee, ~~he~~ the department shall ~~suspend the~~ have his certificate ~~suspended by~~
6 ~~the department. If the~~ The department shall revoke any certificate ~~that~~ remains suspended for a period of more
7 than 30 days, ~~it shall be revoked by the department.~~ However, the department, before this revocation, shall notify
8 the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10
9 days before the time set for action to be taken by the department on the certificate.

10 (3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred
11 through error or omission or other fact or circumstances indicating to the department that the certificate holder
12 was not guilty of negligence or laches.

13 (4) Notice of suspension ~~shall~~ must be given to the certificate holder when the suspension occurs and
14 to the proper official or owner of the treatment works or distribution system.

15 (5) If a person whose certificate has been revoked through ~~his~~ the person's own fault desires to continue
16 as a water or wastewater plant operator, ~~he~~ the person ~~must~~ shall make application to the department under
17 37-42-304. Successful completion of an examination may be required at the discretion of the department."
18

19 **Section 6.** Section 37-42-308, MCA, is amended to read:

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24 adopted by the department pursuant to 37-1-134, ~~except that the department shall reduce the fee by the amount~~
25 ~~that the cost of administering the certificate is offset by federal funds received to fund the administration of the~~
26 ~~program.~~

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9 as a water or wastewater plant operator, ~~he~~ the person ~~must~~ shall make application to the department under
10 37-42-304. Successful completion of an examination may be required at the discretion of the department."
11

12 **Section 7.** Section 75-5-301, MCA, is amended to read:

13 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of 80-15-201
14 and this chapter, the board shall:

15 (1) establish the classification of all state waters in accordance with their present and future most
16 beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an
17 aquatic ecosystem that includes salmonid or nonsalmonid fish;

18 (2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste
19 treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the
20 requirements of 75-5-312.

21 (b) Standards adopted by the board must meet the following requirements:

22 (i) for carcinogens, the water quality standard for protection of human health must be the value
23 associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x
24 10⁻³ in the case of arsenic and 1 x 10⁻⁵ for other carcinogens. However, if a standard established at a risk level
25 of 1 x 10⁻³ for arsenic or 1 x 10⁻⁵ for other carcinogens violates the maximum contaminant level obtained from
26 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

27 (ii) standards for the protection of aquatic life do not apply to ground water.

28 (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this
29 chapter, revise established classifications of waters and adopted standards of water quality;

30 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the

1 department be specifically identified and requiring that mixing zones have:

2 (a) the smallest practicable size;

3 (b) a minimum practicable effect on water uses; and

4 (c) definable boundaries;

5 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited
6 to rules that:

7 (a) provide a procedure for department review and authorization of degradation;

8 (b) establish criteria for the following:

9 (i) determining important economic or social development; and

10 (ii) weighing the social and economic importance to the public of allowing the proposed project against
11 the cost to society associated with a loss of water quality;

12 (c) establish criteria for determining whether a proposed activity or class of activities, in addition to those
13 activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order
14 that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in
15 a manner that generally:

16 (i) equates significance with the potential for harm to human health or the environment;

17 (ii) considers both the quantity and the strength of the pollutant;

18 (iii) considers the length of time the degradation will occur;

19 (iv) considers the character of the pollutant so that greater significance is associated with carcinogens
20 and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less
21 harmful or less persistent.

22 (d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not
23 cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the
24 ground water mixing zone does not exceed:

25 (i) 7.5 milligrams per liter for ~~nitrate as nitrogen from~~ nitrate as nitrogen from sources other than domestic sewage;

26 (ii) 5.0 milligrams per liter for ~~domestic from~~ domestic from sewage effluent discharged from a ~~conventional septic~~
27 system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0
28 milligrams per liter or less;

29 (iii) 7.5 milligrams per liter for ~~domestic from~~ domestic from sewage effluent discharged from a ~~septic~~ system using level
30 two treatment, which must be defined in the rules; or

1 (iv) 7.5 milligrams per liter ~~for domestic from~~ sewage effluent discharged from a ~~conventional septic~~
2 system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter ~~primarily from~~
3 ~~sources other than human waste.~~

4 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and
5 quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines
6 for granting or denying applications for authorization to degrade high-quality waters under the policy established
7 in 75-5-303(2) and (3).

8 (7) adopt rules to implement this section."
9

10 **Section 8.** Section 75-5-636, MCA, is amended to read:

11 **"75-5-636. Investigation of complaints by other parties.** A person, association, corporation, or agency
12 of the state or federal government may notify the department of an alleged violation of this chapter. Based upon
13 information submitted by the person, association, corporation, or agency, the department shall conduct an
14 investigation to determine the validity of the complaint. If a violation is established by the department's
15 investigation, the department shall initiate an appropriate enforcement response ~~as described in 75-5-617.~~ If the
16 investigation proves the protest to have been without reasonable cause, the department may seek recovery of
17 investigative costs from the person who made the notification."
18

19 **Section 9.** Section 75-6-109, MCA, is amended to read:

20 **"75-6-109. Administrative enforcement.** (1) If the department believes that a violation of this part, a
21 rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written
22 notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the
23 provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to
24 constitute a violation. The notice must include an order to take necessary corrective action within a reasonable
25 period of time. The time period must be stated in the order. Service by mail is complete on the date of filing.

26 (2) If the alleged violator does not request a hearing before the board within 30 days of the date of
27 service, the order becomes final. Failure to comply with a final order may subject the violator to an action
28 commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

29 (3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the
30 board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) An action initiated under this part may include an administrative penalty not to exceed ~~\$500~~ \$1,000 for each day of violation. Administrative penalties collected under this section must be deposited in the state general fund.

(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under 75-6-103(2)(i).

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

Section 10. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into state waters or on the banks of state waters or into an abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

~~(3) build or operate a railroad, logging road, logging camp, or electric or manufacturing plant of any kind on a watershed of a public water supply system unless:~~

~~—— (a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and~~

~~—— (b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;~~

~~(4)~~(3) commence construction, alteration, extension, or operation of a system of water supply or water

1 distribution that is designed to be a public water supply system or a system of sewer, drainage, waste, or sewage
2 disposal that is designed to be a public sewage system or industrial waste discharge system before the person
3 submits to the department necessary maps, plans, and specifications for its review and the department approves
4 those maps, plans, and specifications. However, any facility reviewed by the department under Title 75, chapter
5 5, is not subject to the provisions of this section.

6 ~~(5)(4)~~ operate or maintain a public water supply system that exceeds a maximum contaminant level
7 established by the board unless the person has been granted or has an application pending for a variance or
8 exemption pursuant to this part;

9 ~~(6)(5)~~ violate any provision of this part or a rule adopted under this part; or

10 ~~(7)(6)~~ violate any condition or requirement of an approval issued pursuant to this part."
11

12 NEW SECTION. **Section 11. Repealer.** Sections 75-5-501, 75-5-617, and 75-6-110, MCA, are
13 repealed.
14

15 NEW SECTION. **Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are
16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
17 the part remains in effect in all valid applications that are severable from the invalid applications.
18

19 NEW SECTION. **Section 13. Contingent voidness.** If Constitutional Initiative No. 75, enacting Article
20 VIII, section 17, of the Montana constitution, is declared invalid, then [sections 3 and 5 of this act] are void on the
21 date of the determination of invalidity.
22

23 NEW SECTION. **Section 14. Effective date -- contingent effective date.** (1) Except as provided in
24 subsection (2), [this act] is effective on passage and approval.

25 (2) [Sections 4 and 6] are effective on the date of the occurrence of the contingency provided for in
26 [section 13].
27

- END -

SENATE BILL NO. 72

INTRODUCED BY B. KEENAN

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WATER QUALITY, PUBLIC WATER SUPPLY, AND WATER AND WASTEWATER TREATMENT OPERATORS LAWS; EXEMPTING CERTAIN WATER DISTRIBUTION SYSTEMS FROM THE REQUIREMENT TO USE A CERTIFIED OPERATOR; AMENDING THE NONDEGRADATION NITRATE SIGNIFICANCE THRESHOLD FOR MULTIFAMILY, PUBLIC, AND MUNICIPAL SEWAGE SYSTEMS; AMENDING PUBLIC WATER SUPPLY LAWS BY INCREASING THE MAXIMUM ADMINISTRATIVE PENALTY; DELETING THE REQUIREMENT TO OBTAIN APPROVAL TO CONDUCT CERTAIN ACTIVITIES IN MUNICIPAL WATERSHEDS; REPEALING PROVISIONS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW'S CONTROL OF CERTAIN FUNDS ~~AND RELATED TO MANDATORY ENFORCEMENT REQUIREMENTS~~; AMENDING SECTIONS 37-42-103, 37-42-302, 37-42-304, 37-42-308, 75-5-301, ~~75-5-636~~, 75-6-109, AND 75-6-112, MCA; REPEALING ~~SECTIONS~~ SECTION 75-5-501, ~~75-5-617, AND 75-6-110~~, MCA; AND PROVIDING EFFECTIVE DATES."

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of an operator without being certified under this chapter.

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(a) does not contain a treatment facility;

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29 ~~the department. If the~~ The department shall revoke any certificate ~~that~~ remains suspended for a period of more
30 than 30 days, ~~it shall be revoked by the department.~~ However, the department, before this revocation, shall notify

1 the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10
2 days before the time set for action to be taken by the department on the certificate.

3 (3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred
4 through error or omission or other fact or circumstances indicating to the department that the certificate holder
5 was not guilty of negligence or laches.

6 (4) Notice of suspension ~~shall~~ must be given to the certificate holder when the suspension occurs and
7 to the proper official or owner of the treatment works or distribution system.

8 (5) If a person whose certificate has been revoked through ~~his~~ the person's own fault desires to continue
9 as a water or wastewater plant operator, ~~he~~ the person ~~must~~ shall make application to the department under
10 37-42-304. Successful completion of an examination may be required at the discretion of the department."
11

12 **Section 7.** Section 75-5-301, MCA, is amended to read:

13 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of 80-15-201
14 and this chapter, the board shall:

15 (1) establish the classification of all state waters in accordance with their present and future most
16 beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an
17 aquatic ecosystem that includes salmonid or nonsalmonid fish;

18 (2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste
19 treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the
20 requirements of 75-5-312.

21 (b) Standards adopted by the board must meet the following requirements:

22 (i) for carcinogens, the water quality standard for protection of human health must be the value
23 associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x
24 10⁻³ in the case of arsenic and 1 x 10⁻⁵ for other carcinogens. However, if a standard established at a risk level
25 of 1 x 10⁻³ for arsenic or 1 x 10⁻⁵ for other carcinogens violates the maximum contaminant level obtained from
26 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

27 (ii) standards for the protection of aquatic life do not apply to ground water.

28 (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this
29 chapter, revise established classifications of waters and adopted standards of water quality;

30 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the

department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter for nitrate as nitrogen from sources other than domestic sewage;

(ii) 5.0 milligrams per liter for domestic from sewage effluent discharged from a conventional septic system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;

(iii) 7.5 milligrams per liter for domestic from sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter ~~for domestic from~~ sewage effluent discharged from a conventional septic system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter ~~primarily from sources other than human waste~~ PRIMARILY FROM SOURCES OTHER THAN HUMAN WASTE.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

~~Section 8. Section 75-5-636, MCA, is amended to read:~~

~~"75-5-636. Investigation of complaints by other parties. A person, association, corporation, or agency of the state or federal government may notify the department of an alleged violation of this chapter. Based upon information submitted by the person, association, corporation, or agency, the department shall conduct an investigation to determine the validity of the complaint. If a violation is established by the department's investigation, the department shall initiate an appropriate enforcement response as described in 75-5-617. If the investigation proves the protest to have been without reasonable cause, the department may seek recovery of investigative costs from the person who made the notification."~~

Section 8. Section 75-6-109, MCA, is amended to read:

"75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) ~~(A) An action initiated under this part may include an administrative penalty not to exceed: \$500 \$1,000 for each day of violation.~~

~~(i) \$1,000 FOR EACH DAY OF A VIOLATION PERTAINING TO A PUBLIC WATER SYSTEM, OTHER THAN A WATER HAULER OR A WATER BOTTLING PLANT, THAT SERVES A POPULATION OF MORE THAN 10,000; AND~~

~~(ii) \$500 FOR EACH DAY OF VIOLATION FOR OTHER VIOLATIONS.~~

~~(B) Administrative penalties collected under this section must be deposited in the state general fund.~~

(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under 75-6-103(2)(i).

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

Section 9. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into state waters or on the banks of state waters or into an abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

~~(3) build or operate a railroad, logging road, logging camp, or electric or manufacturing plant of any kind on a watershed of a public water supply system unless:~~

~~—— (a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and~~

~~_____ (b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;~~

~~(4)~~(3) commence construction, alteration, extension, or operation of a system of water supply or water distribution that is designed to be a public water supply system or a system of sewer, drainage, waste, or sewage disposal that is designed to be a public sewage system or industrial waste discharge system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications. However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section.

(4) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the board unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;

~~(6)~~(5) violate any provision of this part or a rule adopted under this part; or

(7)(6) violate any condition or requirement of an approval issued pursuant to this part."

NEW SECTION. Section 10. Repealer. Sections 75-5-501, 75-5-617, and 75-6-110, MCA, are SECTION 75-5-501, MCA, is repealed.

NEW SECTION. **Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 12. Contingent voidness.** If Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution, is declared invalid, then [sections 3 and 5 of this act] are void on the date of the determination of invalidity.

NEW SECTION. **Section 13. Effective date -- contingent effective date.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 4 and 6] are effective on the date of the occurrence of the contingency provided for in [section ~~13~~ 12].

- END -

SENATE BILL NO. 72

INTRODUCED BY B. KEENAN

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WATER QUALITY, PUBLIC WATER SUPPLY, AND WATER AND WASTEWATER TREATMENT OPERATORS LAWS; EXEMPTING CERTAIN WATER DISTRIBUTION SYSTEMS FROM THE REQUIREMENT TO USE A CERTIFIED OPERATOR; AMENDING THE NONDEGRADATION NITRATE SIGNIFICANCE THRESHOLD FOR MULTIFAMILY, PUBLIC, AND MUNICIPAL SEWAGE SYSTEMS; AMENDING PUBLIC WATER SUPPLY LAWS BY INCREASING THE MAXIMUM ADMINISTRATIVE PENALTY; DELETING THE REQUIREMENT TO OBTAIN APPROVAL TO CONDUCT CERTAIN ACTIVITIES IN MUNICIPAL WATERSHEDS; REPEALING PROVISIONS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW'S CONTROL OF CERTAIN FUNDS ~~AND RELATED TO MANDATORY ENFORCEMENT REQUIREMENTS~~; AMENDING SECTIONS 37-42-103, 37-42-302, 37-42-304, 37-42-308, 75-5-301, ~~75-5-636~~, 75-6-109, AND 75-6-112, MCA; REPEALING ~~SECTIONS~~ SECTION 75-5-501, ~~75-5-617, AND 75-6-110~~, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE ~~DATES~~ DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-42-103, MCA, is amended to read:

"37-42-103. Exemption. Operators of plants or systems ~~serving less than 10 families that do not serve~~ 15 or more service connections or 25 or more people for at least 60 days of the calendar year are exempt from this chapter."

Section 2. Section 37-42-302, MCA, is amended to read:

"37-42-302. Unlawful to operate plant or system without certified operator -- department to issue temporary certificates -- exception. (1) ~~It~~ Except as provided in subsection (3), it is unlawful for a person, firm, or corporation, both municipal and private, operating a wastewater treatment plant, water treatment plant, or water distribution system to operate ~~it~~ the plant or system unless the competency of the operator is certified to by the department under this chapter.

(2) ~~Furthermore~~ Except as provided in subsection (3), it is unlawful for a person to perform the duties

of an operator without being certified under this chapter.

(3) The prohibitions in subsections (1) and (2) do not pertain to a water distribution system that:

(a) does not contain a treatment facility;

(b) obtains all of its water from a public water supply system but is not owned or operated by the owner or operator of that public water supply system; and

(c) does not sell water.

~~(3)~~(4) For good cause shown, the department may issue temporary certificates that are valid for up to 1 year."

~~Section 3. Section 37-42-304, MCA, is amended to read:~~

~~"37-42-304. Application for operator's certificate -- fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost as established pursuant to 37-1-134 and shall in effect on November 3, 1998, except that the department shall reduce the fee by the amount that the cost of processing the application is offset by federal funds received. The department may not act on an application until the fee has been paid."~~

Section 3. Section 37-42-304, MCA, is amended to read:

"37-42-304. Application for operator's certificate -- fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost as established pursuant to 37-1-134 ~~and shall~~, except that the department shall reduce the fee by the amount that the cost of processing the application is offset by federal funds received. The department may not act on an application until the fee has been paid."

~~Section 5. Section 37-42-308, MCA, is amended to read:~~

~~"37-42-308. Annual renewal -- fees -- revocation for failure to renew -- reinstatement -- notice of suspension. (1) Certificates issued under this chapter shall must be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule~~

1 ~~adopted by the department pursuant to 37-1-134 in the amount in effect on November 3, 1998, except that the~~
2 ~~department shall reduce the fee by the amount that the cost of administering the certificate is offset by federal~~
3 ~~funds received to fund the administration of the program.~~

4 ~~——— (2) If a certificate holder does not apply for a renewal of his the certificate before July 1 and remit to the~~
5 ~~department the necessary renewal fee, he the department shall suspend the have his certificate suspended by~~
6 ~~the department. If the The department shall revoke any certificate that remains suspended for a period of more~~
7 ~~than 30 days, it shall be revoked by the department. However, the department, before this revocation, shall notify~~
8 ~~the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10~~
9 ~~days before the time set for action to be taken by the department on the certificate.~~

10 ~~——— (3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred~~
11 ~~through error or omission or other fact or circumstances indicating to the department that the certificate holder~~
12 ~~was not guilty of negligence or laches.~~

13 ~~——— (4) Notice of suspension shall must be given to the certificate holder when the suspension occurs and~~
14 ~~to the proper official or owner of the treatment works or distribution system.~~

15 ~~——— (5) If a person whose certificate has been revoked through his the person's own fault desires to continue~~
16 ~~as a water or wastewater plant operator, he the person must shall make application to the department under~~
17 ~~37-42-304. Successful completion of an examination may be required at the discretion of the department."~~

19 **Section 4.** Section 37-42-308, MCA, is amended to read:

20 **"37-42-308. Annual renewal -- fees -- revocation for failure to renew -- reinstatement -- notice of**
21 **suspension.** (1) Certificates issued under this chapter ~~shall~~ must be renewed annually before July 1. A
22 certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304,
23 a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule
24 adopted by the department pursuant to 37-1-134, ~~except that the department shall reduce the fee by the amount~~
25 ~~that the cost of administering the certificate is offset by federal funds received to fund the administration of the~~
26 ~~program.~~

27 (2) If a certificate holder does not apply for a renewal of his the certificate before July 1 and remit to the
28 department the necessary renewal fee, he the department shall suspend the ~~have his~~ certificate ~~suspended by~~
29 ~~the department. If the The department shall revoke any certificate that remains suspended for a period of more~~
30 ~~than 30 days, it shall be revoked by the department. However, the department, before this revocation, shall notify~~

1 the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10
2 days before the time set for action to be taken by the department on the certificate.

3 (3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred
4 through error or omission or other fact or circumstances indicating to the department that the certificate holder
5 was not guilty of negligence or laches.

6 (4) Notice of suspension ~~shall~~ must be given to the certificate holder when the suspension occurs and
7 to the proper official or owner of the treatment works or distribution system.

8 (5) If a person whose certificate has been revoked through ~~his~~ the person's own fault desires to continue
9 as a water or wastewater plant operator, ~~he~~ the person ~~must~~ shall make application to the department under
10 37-42-304. Successful completion of an examination may be required at the discretion of the department."
11

12 **Section 5.** Section 75-5-301, MCA, is amended to read:

13 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of 80-15-201
14 and this chapter, the board shall:

15 (1) establish the classification of all state waters in accordance with their present and future most
16 beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an
17 aquatic ecosystem that includes salmonid or nonsalmonid fish;

18 (2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste
19 treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the
20 requirements of 75-5-312.

21 (b) Standards adopted by the board must meet the following requirements:

22 (i) for carcinogens, the water quality standard for protection of human health must be the value
23 associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x
24 10⁻³ in the case of arsenic and 1 x 10⁻⁵ for other carcinogens. However, if a standard established at a risk level
25 of 1 x 10⁻³ for arsenic or 1 x 10⁻⁵ for other carcinogens violates the maximum contaminant level obtained from
26 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

27 (ii) standards for the protection of aquatic life do not apply to ground water.

28 (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this
29 chapter, revise established classifications of waters and adopted standards of water quality;

30 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the

1 department be specifically identified and requiring that mixing zones have:

2 (a) the smallest practicable size;

3 (b) a minimum practicable effect on water uses; and

4 (c) definable boundaries;

5 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited
6 to rules that:

7 (a) provide a procedure for department review and authorization of degradation;

8 (b) establish criteria for the following:

9 (i) determining important economic or social development; and

10 (ii) weighing the social and economic importance to the public of allowing the proposed project against
11 the cost to society associated with a loss of water quality;

12 (c) establish criteria for determining whether a proposed activity or class of activities, in addition to those
13 activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order
14 that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in
15 a manner that generally:

16 (i) equates significance with the potential for harm to human health or the environment;

17 (ii) considers both the quantity and the strength of the pollutant;

18 (iii) considers the length of time the degradation will occur;

19 (iv) considers the character of the pollutant so that greater significance is associated with carcinogens
20 and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less
21 harmful or less persistent.

22 (d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not
23 cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the
24 ground water mixing zone does not exceed:

25 (i) 7.5 milligrams per liter for nitrate as nitrogen from sources other than domestic sewage;

26 (ii) 5.0 milligrams per liter for domestic from sewage effluent discharged from a conventional septic
27 system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0
28 milligrams per liter or less;

29 (iii) 7.5 milligrams per liter for domestic from sewage effluent discharged from a septic system using level
30 two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter ~~for domestic from~~ sewage effluent discharged from a conventional septic system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter ~~primarily from sources other than human waste~~ PRIMARILY FROM SOURCES OTHER THAN HUMAN WASTE.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

~~Section 6. Section 75-5-636, MCA, is amended to read:~~

~~"75-5-636. Investigation of complaints by other parties. A person, association, corporation, or agency of the state or federal government may notify the department of an alleged violation of this chapter. Based upon information submitted by the person, association, corporation, or agency, the department shall conduct an investigation to determine the validity of the complaint. If a violation is established by the department's investigation, the department shall initiate an appropriate enforcement response as described in 75-5-617. If the investigation proves the protest to have been without reasonable cause, the department may seek recovery of investigative costs from the person who made the notification."~~

Section 6. Section 75-6-109, MCA, is amended to read:

"75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) (A) An action initiated under this part may include an administrative penalty not to exceed: ~~\$500~~
~~\$1,000 for each day of violation.~~

(i) \$1,000 FOR EACH DAY OF A VIOLATION PERTAINING TO A PUBLIC WATER SYSTEM, OTHER THAN A WATER HAULER OR A WATER BOTTLING PLANT, THAT SERVES A POPULATION OF MORE THAN 10,000; AND

(ii) \$500 FOR EACH DAY OF VIOLATION FOR OTHER VIOLATIONS.

(B) Administrative penalties collected under this section must be deposited in the state general fund.

(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under 75-6-103(2)(i).

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

Section 7. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into state waters or on the banks of state waters or into an abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

~~(3) build or operate a railroad, logging road, logging camp, or electric or manufacturing plant of any kind on a watershed of a public water supply system unless:~~

~~—— (a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and~~

~~_____ (b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;~~

~~(4)~~(3) commence construction, alteration, extension, or operation of a system of water supply or water distribution that is designed to be a public water supply system or a system of sewer, drainage, waste, or sewage disposal that is designed to be a public sewage system or industrial waste discharge system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications. However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section.

~~(5)~~(4) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the board unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;

~~(6)~~(5) violate any provision of this part or a rule adopted under this part; or

(7)(6) violate any condition or requirement of an approval issued pursuant to this part."

NEW SECTION. **Section 8. Repealer.** ~~Sections 75-5-501, 75-5-617, and 75-6-110, MCA, are~~ SECTION
75-5-501, MCA, is repealed.

NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

~~NEW SECTION. Section 12. Contingent voidness.~~ If Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution, is declared invalid, then [sections 3 and 5 of this act] are void on the date of the determination of invalidity.

NEW SECTION. **Section 10. Effective date -- contingent effective date.** (1) Except as provided in subsection (2), [this [THIS act] is effective on passage and approval.

~~_____ (2) [Sections 4 and 6] are effective on the date of the occurrence of the contingency provided for in [section 13-12].~~

- END -

SENATE BILL NO. 72

INTRODUCED BY B. KEENAN

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WATER QUALITY, PUBLIC WATER SUPPLY, AND WATER AND WASTEWATER TREATMENT OPERATORS LAWS; EXEMPTING CERTAIN WATER DISTRIBUTION SYSTEMS FROM THE REQUIREMENT TO USE A CERTIFIED OPERATOR; AMENDING THE NONDEGRADATION NITRATE SIGNIFICANCE THRESHOLD FOR MULTIFAMILY, PUBLIC, AND MUNICIPAL SEWAGE SYSTEMS; AMENDING PUBLIC WATER SUPPLY LAWS BY INCREASING THE MAXIMUM ADMINISTRATIVE PENALTY; DELETING THE REQUIREMENT TO OBTAIN APPROVAL TO CONDUCT CERTAIN ACTIVITIES IN MUNICIPAL WATERSHEDS; REPEALING PROVISIONS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW'S CONTROL OF CERTAIN FUNDS ~~AND RELATED TO MANDATORY ENFORCEMENT REQUIREMENTS~~; AMENDING SECTIONS 37-42-103, 37-42-302, 37-42-304, 37-42-308, 75-5-301, ~~75-5-636~~, 75-6-109, AND 75-6-112, MCA; REPEALING ~~SECTIONS~~ SECTION 75-5-501, ~~75-5-617, AND 75-6-110~~, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE ~~DATES~~ DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-42-103, MCA, is amended to read:

"37-42-103. Exemption. Operators of plants or systems ~~serving less than 10 families that do not serve~~ 15 or more service connections or 25 or more people for at least 60 days of the calendar year are exempt from this chapter."

Section 2. Section 37-42-302, MCA, is amended to read:

"37-42-302. Unlawful to operate plant or system without certified operator -- department to issue temporary certificates -- exception. (1) ~~It~~ Except as provided in subsection (3), it is unlawful for a person, firm, or corporation, both municipal and private, operating a wastewater treatment plant, water treatment plant, or water distribution system to operate ~~it~~ the plant or system unless the competency of the operator is certified to by the department under this chapter.

(2) ~~Furthermore~~ Except as provided in subsection (3), it is unlawful for a person to perform the duties

of an operator without being certified under this chapter.

(3) The prohibitions in subsections (1) and (2) do not pertain to a water distribution system that:

(a) does not contain a treatment facility;

(b) obtains all of its water from a public water supply system but is not owned or operated by the owner or operator of that public water supply system; and

(c) does not sell water.

~~(3)~~(4) For good cause shown, the department may issue temporary certificates that are valid for up to 1 year."

~~Section 3. Section 37-42-304, MCA, is amended to read:~~

~~"37-42-304. Application for operator's certificate -- fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost as established pursuant to 37-1-134 and shall in effect on November 3, 1998, except that the department shall reduce the fee by the amount that the cost of processing the application is offset by federal funds received. The department may not act on an application until the fee has been paid."~~

Section 3. Section 37-42-304, MCA, is amended to read:

"37-42-304. Application for operator's certificate -- fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost as established pursuant to 37-1-134 ~~and shall~~, except that the department shall reduce the fee by the amount that the cost of processing the application is offset by federal funds received. The department may not act on an application until the fee has been paid."

~~Section 5. Section 37-42-308, MCA, is amended to read:~~

~~"37-42-308. Annual renewal -- fees -- revocation for failure to renew -- reinstatement -- notice of suspension. (1) Certificates issued under this chapter shall must be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule~~

1 ~~adopted by the department pursuant to 37-1-134 in the amount in effect on November 3, 1998, except that the~~
2 ~~department shall reduce the fee by the amount that the cost of administering the certificate is offset by federal~~
3 ~~funds received to fund the administration of the program.~~

4 ~~——— (2) If a certificate holder does not apply for a renewal of his the certificate before July 1 and remit to the~~
5 ~~department the necessary renewal fee, he the department shall suspend the have his certificate suspended by~~
6 ~~the department. If the The department shall revoke any certificate that remains suspended for a period of more~~
7 ~~than 30 days, it shall be revoked by the department. However, the department, before this revocation, shall notify~~
8 ~~the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10~~
9 ~~days before the time set for action to be taken by the department on the certificate.~~

10 ~~——— (3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred~~
11 ~~through error or omission or other fact or circumstances indicating to the department that the certificate holder~~
12 ~~was not guilty of negligence or laches.~~

13 ~~——— (4) Notice of suspension shall must be given to the certificate holder when the suspension occurs and~~
14 ~~to the proper official or owner of the treatment works or distribution system.~~

15 ~~——— (5) If a person whose certificate has been revoked through his the person's own fault desires to continue~~
16 ~~as a water or wastewater plant operator, he the person must shall make application to the department under~~
17 ~~37-42-304. Successful completion of an examination may be required at the discretion of the department."~~

19 **Section 4.** Section 37-42-308, MCA, is amended to read:

20 **"37-42-308. Annual renewal -- fees -- revocation for failure to renew -- reinstatement -- notice of**
21 **suspension.** (1) Certificates issued under this chapter ~~shall~~ must be renewed annually before July 1. A
22 certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304,
23 a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule
24 adopted by the department pursuant to 37-1-134, ~~except that the department shall reduce the fee by the amount~~
25 ~~that the cost of administering the certificate is offset by federal funds received to fund the administration of the~~
26 ~~program.~~

27 (2) If a certificate holder does not apply for a renewal of his the certificate before July 1 and remit to the
28 department the necessary renewal fee, he the department shall suspend the ~~have his~~ certificate ~~suspended by~~
29 ~~the department. If the The department shall revoke any certificate that remains suspended for a period of more~~
30 ~~than 30 days, it shall be revoked by the department. However, the department, before this revocation, shall notify~~

1 the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10
2 days before the time set for action to be taken by the department on the certificate.

3 (3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred
4 through error or omission or other fact or circumstances indicating to the department that the certificate holder
5 was not guilty of negligence or laches.

6 (4) Notice of suspension ~~shall~~ must be given to the certificate holder when the suspension occurs and
7 to the proper official or owner of the treatment works or distribution system.

8 (5) If a person whose certificate has been revoked through ~~his~~ the person's own fault desires to continue
9 as a water or wastewater plant operator, ~~he~~ the person ~~must~~ shall make application to the department under
10 37-42-304. Successful completion of an examination may be required at the discretion of the department."
11

12 **Section 5.** Section 75-5-301, MCA, is amended to read:

13 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of 80-15-201
14 and this chapter, the board shall:

15 (1) establish the classification of all state waters in accordance with their present and future most
16 beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an
17 aquatic ecosystem that includes salmonid or nonsalmonid fish;

18 (2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste
19 treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the
20 requirements of 75-5-312.

21 (b) Standards adopted by the board must meet the following requirements:

22 (i) for carcinogens, the water quality standard for protection of human health must be the value
23 associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x
24 10⁻³ in the case of arsenic and 1 x 10⁻⁵ for other carcinogens. However, if a standard established at a risk level
25 of 1 x 10⁻³ for arsenic or 1 x 10⁻⁵ for other carcinogens violates the maximum contaminant level obtained from
26 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

27 (ii) standards for the protection of aquatic life do not apply to ground water.

28 (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this
29 chapter, revise established classifications of waters and adopted standards of water quality;

30 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the

1 department be specifically identified and requiring that mixing zones have:

2 (a) the smallest practicable size;

3 (b) a minimum practicable effect on water uses; and

4 (c) definable boundaries;

5 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited
6 to rules that:

7 (a) provide a procedure for department review and authorization of degradation;

8 (b) establish criteria for the following:

9 (i) determining important economic or social development; and

10 (ii) weighing the social and economic importance to the public of allowing the proposed project against
11 the cost to society associated with a loss of water quality;

12 (c) establish criteria for determining whether a proposed activity or class of activities, in addition to those
13 activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order
14 that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in
15 a manner that generally:

16 (i) equates significance with the potential for harm to human health or the environment;

17 (ii) considers both the quantity and the strength of the pollutant;

18 (iii) considers the length of time the degradation will occur;

19 (iv) considers the character of the pollutant so that greater significance is associated with carcinogens
20 and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less
21 harmful or less persistent.

22 (d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not
23 cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the
24 ground water mixing zone does not exceed:

25 (i) 7.5 milligrams per liter for ~~nitrate as nitrogen from~~ nitrate as nitrogen from sources other than domestic sewage;

26 (ii) 5.0 milligrams per liter for ~~domestic from~~ domestic from sewage effluent discharged from a ~~conventional septic~~
27 system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0
28 milligrams per liter or less;

29 (iii) 7.5 milligrams per liter for ~~domestic from~~ domestic from sewage effluent discharged from a ~~septic~~ system using level
30 two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter ~~for domestic from~~ sewage effluent discharged from a conventional septic system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter ~~primarily from sources other than human waste~~ PRIMARILY FROM SOURCES OTHER THAN HUMAN WASTE.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

~~Section 6. Section 75-5-636, MCA, is amended to read:~~

~~"75-5-636. Investigation of complaints by other parties. A person, association, corporation, or agency of the state or federal government may notify the department of an alleged violation of this chapter. Based upon information submitted by the person, association, corporation, or agency, the department shall conduct an investigation to determine the validity of the complaint. If a violation is established by the department's investigation, the department shall initiate an appropriate enforcement response as described in 75-5-617. If the investigation proves the protest to have been without reasonable cause, the department may seek recovery of investigative costs from the person who made the notification."~~

Section 6. Section 75-6-109, MCA, is amended to read:

"75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) (A) An action initiated under this part may include an administrative penalty not to exceed: ~~\$500~~
~~\$1,000 for each day of violation.~~

(i) \$1,000 FOR EACH DAY OF A VIOLATION PERTAINING TO A PUBLIC WATER SYSTEM, OTHER THAN A WATER HAULER OR A WATER BOTTLING PLANT, THAT SERVES A POPULATION OF MORE THAN 10,000; AND

(ii) \$500 FOR EACH DAY OF VIOLATION FOR OTHER VIOLATIONS.

(B) Administrative penalties collected under this section must be deposited in the state general fund.

(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under 75-6-103(2)(i).

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

Section 7. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into state waters or on the banks of state waters or into an abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

~~(3) build or operate a railroad, logging road, logging camp, or electric or manufacturing plant of any kind on a watershed of a public water supply system unless:~~

~~—— (a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and~~

1 ~~_____ (b) a permit has been issued by the department after approval of detailed plans and specifications for~~
2 ~~sanitary precautions;~~

3 ~~(4)(3)~~ commence construction, alteration, extension, or operation of a system of water supply or water
4 distribution that is designed to be a public water supply system or a system of sewer, drainage, waste, or sewage
5 disposal that is designed to be a public sewage system or industrial waste discharge system before the person
6 submits to the department necessary maps, plans, and specifications for its review and the department approves
7 those maps, plans, and specifications. However, any facility reviewed by the department under Title 75, chapter
8 5, is not subject to the provisions of this section.

9 ~~(5)(4)~~ operate or maintain a public water supply system that exceeds a maximum contaminant level
10 established by the board unless the person has been granted or has an application pending for a variance or
11 exemption pursuant to this part;

12 ~~(6)(5)~~ violate any provision of this part or a rule adopted under this part; or

13 ~~(7)(6)~~ violate any condition or requirement of an approval issued pursuant to this part."
14

15 NEW SECTION. Section 8. Repealer. ~~Sections 75-5-501, 75-5-617, and 75-6-110, MCA, are~~ SECTION
16 75-5-501, MCA, is repealed.
17

18 NEW SECTION. Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable
19 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
20 remains in effect in all valid applications that are severable from the invalid applications.
21

22 ~~_____ NEW SECTION. Section 12. Contingent voidness. If Constitutional Initiative No. 75, enacting Article~~
23 ~~VIII, section 17, of the Montana constitution, is declared invalid, then [sections 3 and 5 of this act] are void on the~~
24 ~~date of the determination of invalidity.~~
25

26 NEW SECTION. Section 10. Effective date -- contingent effective date. ~~(1) Except as provided in~~
27 ~~subsection (2), [this [THIS act] is effective on passage and approval.~~

28 ~~_____ (2) [Sections 4 and 6] are effective on the date of the occurrence of the contingency provided for in~~
29 ~~[section 13 12].~~
30

- END -

FISCAL NOTE

Bill #: SB0072

Title: Revise water quality laws

Primary

Sponsor: Bob Keenan

Status: As introduced

Sponsor signature	Date	Dave Lewis, Budget Director	Date
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Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Expenditures:	\$0	\$0
Revenue:		
General Fund	\$2,500	\$2,500
Net Impact on General Fund Balance:	\$2,500	\$2,500

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

Department of Environmental Quality

1. Federal grant funds have previously been authorized by the U. S. EPA to fund the water and wastewater operator certification program and used by the department.
2. Sections 3, 4, 5 and 6 will have no net effect on program expenditures and will only codify an existing practice.
3. The changes in Sections 3, 4, 5 and 6 are proposed as a result of a legislative audit.
4. Section 9 provides for enforcement. The number and type of violations to the act that are assessed an administrative penalty will remain the same as in the previous years. FY 1997 and FY 1998 administrative penalties assessed are approximately \$5,000 per biennium.

5. The additional revenues would be twice the current revenues ($\$5,000 \times 2 = \$10,000$ for the biennium) for a difference of \$5,000 for the 2001 biennium or \$2,500/year.
6. All administrative penalties received will continue to be deposited into the general fund.

FISCAL IMPACT:

	FY2000 <u>Difference</u>	FY2001 <u>Difference</u>
<u>Revenues:</u>		
General Fund (01)	\$2,500	\$2,500
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>		
General Fund (01)	\$2,500	\$2,500

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments and other owners and operators of public water systems that violate the act and are assessed an administrative penalty, may be assessed an amount up to twice the previous amounts.

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on January 11, 1999
at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)

Members Excused: Sen. Bill Wilson (D)

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB64, 1/11/1999; SB 72,
1/11/1999; SB 48, 1/11/1999
Executive Action: None

HEARING ON SB 64

Sponsor: SENATOR ARNIE MOHL, SD 39, KALISPELL

Proponents: Don Vidrine, Montana Department of Environmental
Quality

Opponents: Janet Ellis, Montana Audubon Society

Opening Statement By Sponsor:

SENATOR ARNIE MOHL, SD 39, KALISPELL presented SB 64 on behalf of the Department of Environmental Quality for the purpose of trying to eliminate additional work. Currently, whenever a hot plant is moved that has already received MEPA approval and is already permitted, it is necessary to make another complete EIS on that piece of equipment. The equipment is moved quite often and it is placing an unnecessary workload on staff and causing delays. The purpose of the bill is to eliminate having to do location transfer review once the equipment has already been permitted.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 1.3; Comments : None.}

Proponent Testimony:

Don Vidrine, Chief of the Air & Waste Management Bureau for the Montana Department of Environmental Quality, spoke in support of SB 64 according to his written testimony as per **EXHIBIT (nas07a01)**.

Opponent Testimony:

Janet Ellis, Montana Audubon, spoke in opposition to SB 64 according to his written testimony as per **EXHIBIT (nas07a02)**.

{Tape : 1; Side : A; Approx. Time Counter : 1.3 - 10.8; Comments : None.}

Questions from Committee Members and Responses:

SENATOR KEATING questioned if open gravel pits have an Environmental Assessment or EIS done at the time they are opened. **SEN. MOHL** responded when a gravel permit is requested, a complete EIS is done in that location. The permit requires such information as what kind of equipment will be used, approximate time the equipment will be used and location of the equipment in the pit. **SEN. KEATING** responded then the permittee is already regulated, has already gone through the EIS and the equipment being moved from one location to another does not seriously affect those standards which has been reported in the first permitting statement. **SEN. MOHL** stated that was correct.

SENATOR KEATING asked if we were to follow the recommendation and not allow this exemption from 75-2-211 then moving the plant from

one mine to another would require going through the EA requirement under the MEPA language. **Janet Ellis** responded that is true now but there is an option where the Department can go through rulemaking and get that action categorically excluded. **SEN. KEATING** said that would be a challengeable action and the action could be held up for a number of days or a period of time under the language of MEPA if it is not specifically exempt.

SENATOR KEATING questioned if there was a difference between construction fees and operating permit fees. **Don Vidrine**, responded yes. The operating fees are a maintenance fee for a permit whereas the construction fees are application fees or an initial fee based upon the application of the air quality permit. A fee is assessed whenever an application is submitted for an air quality permit. If certain criteria are met, the permit holder is required to pay a maintenance fee. **SEN. KEATING** questioned if there was more than one Bureau funded out of this account. **Don Vidrine** said yes, there are activities funded in our planning division and our monitoring division. Most of those, however, have to be related with the operation of air quality sources. **SEN. KEATING** stated he was concerned if someone is paying a permit fee for air quality that would be merged into this construction fee account but a party paying air quality fees would never pay a construction fee. **Don Vidrine** responded they struggle with this, but they have a Clean Air Advisory Committee that helps establish many of the fees over time. It is a fact that the amount of application fees collected are not commensurate with the total allocation of resources that it takes to process the permit applications. **SEN. KEATING** stated he would like to receive a list of those who pay construction fees and those who pay permit fees to compare.

SENATOR GROSFIELD stated Section 1 talks about portable emission source. Is there anything here besides activities relative to gravel pits and hot plants that is a portable emission source? **Don Vidrine** responded that pretty much covers everything. **SEN. GROSFIELD** questioned if this bill were to pass, would the Department perform that permit function, deciding how much can be emitted, without the MEPA review. **Don Vidrine** responded yes. It is important to understand this bill only has to do with location transfers and has nothing to do with initial applications. When someone submits an application, a complete review of the application is done, the terms and conditions of the permit are described and a MEPA review is conducted - that will not change. The only thing this bill changes is when the source moves from one place to the other, the MEPA review is exempt. This does not in any way take away from our ability to do additional Environmental review associated with the Clean Air Act and put in

additional terms and conditions to meet local conditions for the site they are transferring to.

SEN. GROSFIELD wondered if different locations might be more sensitive such as locating next to a subdivision versus out in the country. There would have to be some difference in the math of emissions you might offer. How do you arrive at that amount as the equipment transfers? He also assumed there was a wide variety in the kinds of crushers one could get. If someone applies to take a huge one next to a subdivision then you would be looking at something different than if they are out in the country. **Don Vidrine** stated in the approval or disapproval process, the rules provide opportunity to make those site specific determinations. The things that really catch our eye are those that may locate near a non-attainment area, an area in which the national air standards have already been demonstrated to have been affected or degraded. **SEN. GROSFIELD** said we have been talking about the mobile nature of these and that they move around quite a bit. Is it not true that some of them don't move so often? There are some gravel pits along the Interstate that have been there many, many years, so I am assuming that some do not move very often. **Don Vidrine** answered that a portable source cannot be at a particular site for more than one year. We are not talking about any effect on stationary sources that have a permanent location.

SENATOR COCCHIARELLA questioned if the Department considered the categorical exclusion and if so, what was the discussion surrounding that. **Jan Sensibaugh, DEQ**, replied they met with **Todd Everts, EQC**, and went through all their alternatives and came up with the rules that guide what is a categorical exclusion and how a programmatic exemption would be done. This appeared to be the only viable alternative since there are so many variables in where these facilities go and the types of facilities. Some go to gravel pits and have already been looked at, some just go into a farmers field. We could not cover everything we needed to cover in a categorical exclusion or the programmatic.

SEN. COCCHIARELLA questioned if they were only permitting the equipment in a portable. **Jan Sensibaugh**, replied when the initial permit is reviewed, the whole EA is done on the equipment and the initial site where that equipment is located. They would not be excluding that, they are only excluding the additional sites it moves to throughout the life of the equipment. Often times the second site has already undergone the MEPA review for the existing gravel pit where the equipment is being transferred. A new site, if it falls under the gravel pit requirements, would have to go under MEPA review for the gravel pit site, not for the

equipment going into the pit. The gravel pit EA looks at the potential equipment that would go in the pit and simply refers to it as a gravel crusher or asphalt plant.

CHAIRMAN CHRISMORE asked Ms. Sensibaugh to please review with Todd Everts before the Committee takes executive action on this bill.

SENATOR GROSFIELD questioned if part of the reason for this bill was due to a gravel pit in Northwestern Montana where the issue got messy due to a lot of local excitement about the gravel pit. If we pass this bill as is, it would remove the requirement for some kind of local public informational meeting which he thought was in the rules. **Mark Simonich, Director of DEQ**, replied that removing the requirement for some type of informational meeting or public hearing was certainly not the impetus behind this bill. They are not trying to take away any requirement to have the Department provide information to the public and collect input, but they are going to look at a situation where MEPA, as it is put in place, looks at these types of operations that are truly temporary and mobile and move from place to place. MEPA does not really do justice to looking at what the potential impacts may be.

{Tape : 1; Side : A; Approx. Time Counter : 10.8 - 35.8; Comments : None.}

Closing by Sponsor:

SENATOR MOHL closed by thanking the committee for a good hearing. This is not intended to help individuals that own the equipment. They still have to apply for permits and still have to give notification that they will transfer. When the equipment is purchased there is a limited amount of time to get all the permits in place and go through the air quality. MEPA has already been done so why do it again. That is why this bill is so important to not have to go through the same scenario all over again. He encouraged a DO PASS recommendation on this bill.

{Tape : 1; Side : A; Approx. Time Counter : 35.8 - 45; Comments : None.}

HEARING ON SB 72

Sponsor: SENATOR BOB KEENAN, SD 38, BIGFORK

Proponents:

Jan Sensibaugh, Department of Environmental Quality
Steve Pilcher, City of Big Timber
Don Allen, Western Environmental Trade Association
Frank Crowley, ASARCO, Inc.
Cary Hegreberg, Montana Wood Products Association

Opponents:

Jeff Barber, Montana Environmental Information Center
Aaron Browning, Northern Plains Resource Council
Vivan Drake, Lewis & Clark County Water Quality Protection Dist.
Janet Ellis, Montana Audubon

Opening Statement by Sponsor:

SENATOR KEENAN opened to say this was an agency bill and he stood before the Committee on the recommendation of his local water treatment plant operator.

Proponent Testimony:

Jan Sensibaugh, Department of Environmental Quality, spoke in support of SB 72 as per her written testimony. **EXHIBIT (nas07a03)**

Steve Pilcher, City of Billings, expressed support for SB 72 with one exception. The bill does provide some positive clarification in a number of areas - the updating of the definition of public water supply system as it relates to operator certification laws is appropriate as is the recognition of availability of federal funds to help offset operator certification fees. The City even supports somewhat cautiously the increase in administrative penalties. The portion that causes us concern is Section 11 which proposes to repeal existing sections of both Montana Public Water Supply Law and the Montana Water Quality Act. In 1994, DHES went through a pretty tough audit of their water quality programs. The EQC was very involved in working with the Department in making some recommendations to address the shortcomings and the specific language that is proposed to be deleted in 75-5-617 and 75-6-110 was included at the request of the Department in response to outed exceptions. I think we should take a very serious look before deleting those important provisions. I ask that you support the bill with recognition of request to delete those two provisions from Section 11.

Don Allen, Western Environmental Trade Association, spoke in favor of SB 72 and concurred with the comments of Steve Pilcher

about 75-5-617 and 75-6-110. We have some concerns about repealing those sections, under the new Section 11.

Frank Crowley, 807 2nd Street, Helena, MT - ASARCO, Inc., spoke in support of SB 72. He had no objection to the bill as written except Section 11 which would be a repealer of the current section 75-5-617. This repealer should be contingent if it is to be in the bill at all. He suggested this was a very balanced section as a result of the study, and it deserves all the Department's remedies. He suggested the committee carefully consider whether that is an appropriate section in an otherwise appropriate bill.

Cary Hegreberg, Montana Wood Products Association, spoke in support of SB 72. In reference to Section 10, which we support, from the standpoint of forestry operations, this is a housekeeping amendment. When this statute was placed into law, logging camps were regularly placed along streams and rivers across Montana and quite often those streams provided municipal drinking water supplies. Roads were built next to streams because it was the only way they could access these areas. Today we are governed by the Streamside Management Zone Law and we apply Forestry Best Management Practices. We show forestry operations are protecting water quality adequately. From the standpoint of forestry, this was simply a redundant section of law and we urge your support.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 10.7; Comments : Side B}

Opponent Testimony:

Jeff Barber, Montana Environmental Information Center, spoke in opposition of SB 72. Our opposition stems primarily from Section 11 which repeals portions of existing laws already referenced. Of particular concern is 75-5-617 and 75-6-110. The Department wants to repeal these because they feel the language is too restrictive and they could not disagree more with that assessment. The most important component of the existing law is that it requires the Department to act when it becomes aware of a violation. By repealing those two provisions the mandate for the Department to act will vanish and the Department will be allowed the discretion whether or not it will respond to water quality violations and what that response will be. They believe Montana's water quality is too valuable to be left to the discretionary authority of the Department. The important thing it does is mandate some form of action. Because of LC989, the Uniform Environmental Enforcement Act is also proposing to repeal these same two sections of the law. They think that would be a

more appropriate form for this type of debate and would like to take it up again there. There are pieces of this bill they do agree with but because of the repealer provision in Section 11, they cannot support it. He asked the committee to amend out the repeal of 75-5-617 and 75-6-110 and, if that does not happen, to table this bill.

Aaron Browning, Northern Plains Resource Council spoke in opposition to SB 72. He agreed with Mr. Pilcher and Mr. Barber with respect to Section 11. The appropriate forum for discussing the wide range of enforcement requirements and responsibilities to the Department is the Uniform Enforcement Bill and that they should have the opportunity and the Senate should have the opportunity to deliberate the merits of amending or repealing those sections while looking at all the cards on the table.

Vivian Drake, Lewis and Clark County Water Quality Protection District, spoke in opposition to SB 72. Although SB 72 does have some positive changes, until rules are in place under the source water protection program she urged the Committee not to eliminate Section 11 of the code.

Janet Ellis, Montana Audubon, would like to see the bill amended as per written testimony **EXHIBIT (nas07a04)**.

Questions from Committee Members and Responses:

SENATOR GROSFIELD questioned in 110, the Department "finds" a person is in violation of this part... What goes into "finding" one way or another?

Mark Simonich, DEQ, said a variety of things could go into finding there is a violation: (1) a situation where the Department has verified a violation in the form of a complaint. (2) in investigating the complaint and making sure it is valid. (3) reports that are required to be filed with the Department, either when the report is received, or simply in not receiving the required report. There are many ways to reach that conclusion but in any case it involved the Department specifically verifying there was a situation of non-compliance.

Closing by Sponsor:

SEN. KEENAN closed by saying he wanted full credit for saving the committee about an hour of time by not referring to this bill as a housekeeping bill. With that he closed.

{Tape : 1; Side : B; Approx. Time Counter : 10.7 - 17.3; Comments : None.}

HEARING ON SB 48

Sponsor: SENATOR CHARLES "CHUCK" SWYSGOOD, SD 17, DILLON

Proponents:

Bud Clinch, Director, DNRC

Patrick Heffernan, Montana Logging Association

Cary Hegreberg, Montana Wood Products Association

Opponents: None.

Opening by Sponsor:

SENATOR CHARLES "CHUCK" SWYSGOOD, SD 17, Dillon, presented SB 48. He stated the Department had a program relative to this piece of legislation and turned it over to the proponents. He also handed out amendments needed to clarify the bill as per **EXHIBIT (nas07a05)**.

{Tape : 1; Side : B; Approx. Time Counter : 20.2 - 21.2; Comments : None.}

Proponent Testimony:

Bud Clinch, DNRC, spoke in support of SB 48. He said the bill is a simple bill. The purpose is to implement the simple business practice of paying the bills before we deposit our revenue into our savings account. The reason the Department would like to pursue that is for a number of reasons as per the following **EXHIBIT (nas07a06)**, **EXHIBIT (nas07a07)**, **EXHIBIT (nas07a08)**, **EXHIBIT (nas07a09)**, **EXHIBIT (nas07a10)**, **EXHIBIT (nas07a11)**

Patrick Heffernan, Montana Loggers Association spoke in support of SB 48 for three reasons: 1) promotes good fiscal stewardship as well as good environmental stewardship, 2) support the business like concept and 3) likes funding expenses from revenue which will promote proper and good management of state trust lands.

Cary Hegreberg, Montana Wood Products Association spoke in support of SB 48 and commended **Mr. Clinch** on the excellent job of laying out the issues and legalities surrounding it. He referred to the stories in the newspapers regarding the below cost timber program of the U.S. Forest Service. He feels this bill goes a

long way toward preventing that kind of situation occurring in the management of our state lands by putting the incentive within the Department staff to generate revenues that will provide their own salaries and operational expenses. This is prudent business management and he urged the Committee's support.

{Tape : 2; Side : A; Approx. Time Counter : 24.7; Comments: None}

Opponent Testimony: None.

Questions from Committee Members and Responses:

SENATOR COLE questioned where is the minus to the General Fund, who receives less dollars? **Mr. Clinch** responded, in reference to the flow chart, they are proposing to put this administration account in just prior to the revenues in Box 4 in route to the Permanent Fund. It will slow the growth of the permanent fund. The money used to offset the expenditures within the Department from the current General Fund would just be reverted to the General Fund. In the fiscal note it is referenced that amount is about \$220,000 a year in lost interest. It is a plus fiscal impact of about \$3.5 million minus \$220,000 of interest income so is still a plus \$3,225,000.

SENATOR KEATING stated all of the court decision and precedent presented here today stems from the old Constitution and the new Constitution was about 1972. He wondered if there is an essential difference between the old Constitution and the new Constitution and does this precedent apply to the language of the new Constitution? **Tommy Butler, DNRC Trust Lands Attorney,** answered by saying there is no difference between the old provisions in the 1889 Constitution and the 1972 Constitution. The 1972 Constitutional Convention agreed with the Attorney's General interpretation of the law thereby agreeing that deducting Trust Administration costs from those permanent funds was allowed by law.

SENATOR MAHLUM commended **Mr. Clinch** on the fiscally responsible manner in which he was running the Department.

{Tape : 2; Side : A; Approx. Time Counter : 24.7 - 30.2; Comments : None.}

Closing by Sponsor:

SEN. SWYSGOOD closed by saying he feels anything is Constitutional until it is challenged and he does not see one beneficiary from this Trust Account protesting this bill. The premise is sound, he thinks we need to start looking at this type

of thing in order to take some strain off the General Fund obligations in the State. He agreed it does slow down the growth of the permanent trust, but if they use this money and manage the lands to be more productive and generate more revenue, it could offset that slowdown. He recommended a DO PASS on SB 48.

{Tape : 2; Side : A; Approx. Time Counter : 30.2 - 31.8; Comments : None.}

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas07aad)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 5, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Bill Eggers (D)
Rep. Bob Raney (D)
Rep. Bob Story (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 40, SB 64, SB 72, 3/2/1999
Executive Action: SB 40, SB 64, SB 72, SJ 3

HEARING ON SENATE BILL 40

Sponsor: Sen. Duane Grimes, SD 20, presented SB 40. The bill would delete the restrictions on the department's ability to sell power from its facility and allow a little more flexibility in the new deregulated environment. He pointed out Montana Power had offered to buy their way out of the contract above Toston. This contract may have a broader market than what they are constricted at under current law. This would allow them to maximize return on the state's investment, protect the bond payments and use the proceeds to rehabilitate dams across Montana.

Proponents: Bud Clinch, Director of Department of Natural Resources and Conservation, spoke for the bill.

EXHIBIT (nah50a01) He described the Toston Dam facility that was built in 1940 for irrigation purposes. He said the department had been looking for a potential source of revenue to have revenue generated on an annual basis to provide resources for rehabilitation for some of the other state owned projects. In 1987 the department retrofitted Toston Dam for hydro-generation and entered into a 30 year contract with Montana Power for the sale of that power. The revenue generated provide revenues for four things: operation and maintenance costs to run the facility, annual payment into maintenance rehabilitation account, pay back on bond payments and an earnings account for repair of other facilities around the state. The bill proposes to amend the statute, a provision that said the department could not sell power generated at a facility except to a public utility, a rural electric coop or a federal power marketing agency selling to Montana customers. This language was negotiated at the time to keep the state from competing.

Opponents: None.

Questions from Committee Members and Responses: Rep. McGee asked why the original restrictions were put in place. Director Clinch replied under the regulating environment it was delineated who could market power. *{Tape : 1; Side : A; Approx. Time Counter : 7.1}*

Closing by Sponsor: Sen. Grimes closed. Rep. Masolo will carry the bill. *{Tape : 1; Side : A; Approx. Time Counter : 15.6}*

HEARING ON SENATE BILL 64

Sponsor: Sen. Arnie Mohl, SD 39, presented SB 64.

EXHIBIT (nah50a02) He discussed gravel pit permitting

requirements. Once the requirements are met and the permits approved, when the hot plant is moved to another pit you have to go through the MEPA process again. Plants and equipment are moved several times during the construction season. This bill would allow the use of the same permit and avoid duplication.

{Tape : 1; Side : A; Approx. Time Counter : 16.7}

Proponents: Jan Sensibaugh, Department of Environmental Quality, described permitting of plants and how SB 64 would improve the program. She provided written testimony. **EXHIBIT (nah50a03)**

{Tape : 1; Side : A; Approx. Time Counter : 21.3 - 27.1}

Opponents: None.

Questions from Committee Members and Responses: Rep. Harper asked about assurances that the people in the locale of the gravel pit had adequate notice. Jan Sensibaugh replied the public was still in control.

Closing by Sponsor: Sen. Mohl closed. He pointed out that those in the business followed all rules and regulations. The fines would destroy the business and they take it very seriously. **{Tape : 1; Side : A; Approx. Time Counter : 28.9 - 31.8}**

HEARING ON SENATE BILL 72

Sponsor: Sen. Bob Keenan, SD 38, said SB 72 was at the request of Department of Environmental Quality. The bill brings the state into conformance with the federal clean water act. He discussed sections of the bill and how they apply to state requirements. The proposed changes would allow the department's water program to function more effectively and efficiently and clarify and correct some inconsistencies in current law.

Proponents: Jan Sensibaugh, representing the Department of Environmental Quality, discussed the bill and presented written testimony. **EXHIBIT (nah50a04)**

Steve Pilcher, representing the City of Billings, spoke in favor of the bill. He said the bill was a response to update the statutes to reflect today's needs and conditions. **{Tape : 1; Side : A; Approx. Time Counter : 38.4}**

Don Allen, representing Western Environmental Trade Association, testified in support of the bill.

Carl Sweitzer, representing Montana Wood Products Association, pointed out the need for updating.

Opponents: None.

Questions from Committee Members and Responses: Rep. Erickson asked if the Uniform Enforcement Act that was tabled in the Senate should be put back in. Jan Sensibaugh replied it should not since it was very contentious for both sides. Rep. Erickson asked if the state was in compliance with EPA regarding nitrate and arsenic. Sensibaugh said SB 499 addresses the EPA concerns.

Closing by Sponsor: Sen. Keenan closed.

EXECUTIVE ACTION ON SENATE BILL 40

Rep. Harper **MOVED DO CONCUR SB 40**. He said this was a clear need. The reason the provisions were tucked in was to appease the power companies and the coops that the state wasn't going into the power generation and sale business directly to customers. Now we need to take it out because if we don't we'll be prohibited from selling this now that the industry is non-regulated.

The question was called. The motion **PASSED** unanimously.

EXECUTIVE ACTION ON SENATE BILL 72

Rep. McGee **MOVED DO CONCUR**. Rep. Younkin **MOVED** an amendment regarding CI-75. The question was called on the amendment. The motion **PASSED** unanimously.

Rep. Younkin **MOVED DO CONCUR AS AMENDED**. Rep. Orr felt the nitrate levels were set too low and he was against the bill. He pointed out that by adopting lower standards it has added costs to the treatment of water that the citizens have had to bear. The fines were increased from \$500 to \$1000 only because the EPA said we had to or we would lose primacy and he did not like that kind of federal top down control. **{Tape : 1; Side : A; Approx. Time Counter : 57.5}**

The question was called. The motion **PASSED** 15-4 with Reps. McGee, Orr, Curtiss and Wagner voting no.

EXECUTIVE ACTION ON SENATE JOINT RESOLUTION 3

Rep. Curtiss **MOVED DO CONCUR**. She said she encouraged attention to reporting. The question was called. The motion **PASSED** 19-0.

ADJOURNMENT

Adjournment: 4:11 P.M.

REP. BILL TASH, Chairman

DEB THOMPSON, Secretary

BT/DT

EXHIBIT (nah50aad)